

Young Offenders Act

(i) in order that the case may proceed instead under that act, or

(ii) in order to proceed himself under that Act if he has jurisdiction thereunder.

In my opinion, these sections are very important tools, so that court judges in juvenile court are able to choose the act under which they consider it desirable to proceed, even in cases where an offence has been established. This clause clearly shows the desire on the part of the government that young persons should have available social and educational measures for their rehabilitation. This is a far cry from the strict application of punitive justice.

Unlike the Juvenile Delinquents Act, the proposed legislation offers a procedural framework with clearly defined limits. It is a question of protecting the interests of the young person and at the same time of providing him with all necessary legal safeguards.

In the traditional scheme of things, the juvenile was considered incapable of understanding his real interest, and for this reason the act did not confer upon him the formal protection enjoyed by offenders tried in other courts. The new act, therefore, is more in line with the present change in the attitude of the authorities towards young people. Paternalistic and authoritarian theories are being abandoned and an attempt is being made to develop a greater sense of individual responsibility among young people and even children.

This sense of responsibility, however, cannot be developed unless the individual is brought to a full awareness of his duties and responsibilities towards society and of the protection in the form of certain basic guarantees which society owes him in return.

Since at this stage I cannot possibly provide a detailed review of the procedural framework proposed, I shall simply comment on it in broad outline, placing particular emphasis upon the more obvious effects of the innovations.

The proposed legislation authorizes the young person, if he indicates his intention to admit the offence, to have the disposition imposed in the jurisdiction where he resides. This right likewise applies to the choice of judicial district within a given province.

It is in fact laid down in sub-clauses (1) and (2) of clause 22 that the young person may claim this right in the case of all offences with the exception of those mentioned in subsection (2) of section 413 of the Criminal Code relating to treason, inciting to mutiny, sedition, piracy or murder. This is one of a group of rights all aimed at ensuring assistance from his community for a young person appearing before a judge.

The new legislation includes the stipulation that the judge, justice or clerk of the court shall not issue a warrant unless he has reasonable and probable ground to believe that it is necessary in the public interest to issue a warrant rather than a summons. This measure is obviously aimed at limiting the number of arrests ordered by the court.

The warrant as well as the summons is to include a statement of the alleged offence and a notice that the young person to whom it is directed is entitled to

representation by counsel of his own choosing. Furthermore, the court must not accept an admission of an offence alleged in an information laid against a young person unless he is assisted by counsel or a parent or some adult who in the opinion of the judge is capable of advising the young person.

One of the legislation's most important innovations is undoubtedly its intention to relieve certain young offenders from a court appearance or from any formal proceedings. Clause 23 in fact authorizes the judge to designate a person to confer with the person who laid the information with a view to disposal of the case without a hearing.

● (3:30 p.m.)

However, this procedure may be adopted only on condition that the attorney general of the province has no objection. The clause provides that the person designated must draw up and present written recommendations before the expiration of two months; such an informal adjustment prevents the institution of new proceedings for the particular offence, once the judge has ordered acceptance of a recommendation for informal adjustment.

This is indisputably a course which would enable social welfare and child protection agencies centralized at regional level, as advocated by a number of people including Judge Marcel Trahan of the Montreal Social Welfare Court, to co-operate with the magistrates in seeking adjustment of all cases where the formal appearance of the young person is not necessary or desirable. In other words, officers of the regional social services would co-operate with the judges and relieve congestion in the courts by eliminating certain appearances.

At this point we should focus on the other aspect of the proposed legislation—that of its flexibility with respect to the legal handling of different types of cases. In each alternative mentioned, the law in addition protects the young person's rights by ensuring mandatory assistance from his family counsel or some other trustworthy person.

When we adopt the precise rules of procedure as for adults and the same right of appeal we clearly demonstrate the important role of juvenile courts and equal status is conferred on the juvenile court judge with that of other judges.

To end this brief description of the protection of the rights of juveniles under the previous act, I would like to mention that, under the new bill, a representative of the information media has the right, except in certain instances, to attend a hearing.

He is chosen by the judge who may also authorize the presence of one or two other representatives chosen by him. Newspapermen will not however have the right to publish any account which might lead to the identification of the child in question and result in future suffering. Their presence at the hearing is an additional guarantee of the young person's rights before the court.

I fully realize that this proposition may infringe on the freedom of the press. On the other hand, it would be irresponsible on our part not to take into account another